



**BellSouth Telecommunications, Inc.**  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

REC'D TN  
REGULATORY DIV.  
Guy M. Hicks  
General Counsel  
01 JAN 26 PM 3:48  
615 214 6301  
Fax 615 214 7406  
EXECUTIVE SECRETARY

January 26, 2001

**VIA HAND DELIVERY**

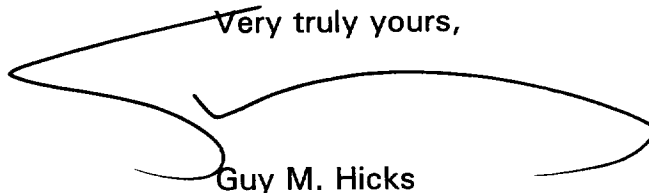
Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*  
Docket No. 00-01151

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to Discount Communications' Motion to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH/jem

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

In Re:       *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.*

Docket No. 00-01151

**BELLSOUTH'S RESPONSE TO DISCOUNT COMMUNICATIONS'  
MOTION TO REQUIRE BELLSOUTH TELECOMMUNICATIONS,  
INC. TO CONTINUE SERVICE PENDING RESOLUTION  
OF THIS PROCEEDING**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits that the Tennessee Regulatory Authority (the "Authority") should deny Discount Communications' ("Discount") Motion to Require BellSouth to Continue Service Pending Resolution of this Proceeding (the "Motion"). The Authority should not order BellSouth to continue providing service if Discount is not paying its bills.

On January 5, 2001, Discount filed its Motion, which as will be shown below, erroneously characterized the January 4, 2001 oral deliberations of the United States Bankruptcy Court. On January 9, following a regularly-scheduled Authority Agenda Conference, the Directors discussed the Motion and posed questions to counsel for the parties, including questions regarding the status of the bankruptcy proceeding ATM/Discount Communications, Inc. had initiated on November 2, 2000.<sup>1</sup> During these discussions, BellSouth proposed that no action

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<sup>1</sup> In its Motion, Discount claimed that last year it merged with Air Time Management, Inc. and that the Staff advised that Discount need only file a name change request with the Authority rather than a petition to transfer its resale certificate. (Motion, p. 2). On February 14, 2000, Mr. Edward Hayes notified the

be taken by the Authority until after a written order was entered by the United States Bankruptcy Court memorializing the Court's January 4 oral deliberations. BellSouth voluntarily agreed to take no action to terminate Discount's service until after the Authority's regularly-scheduled Conference on January 23, 2001, thereby allowing the Authority and the parties to have the Court's written order before them before taking any further action. Discount agreed to BellSouth's proposal and the Authority voted unanimously to hold Discount's Motion in abeyance. The Authority appointed the General Counsel or his designee to make findings of fact and conclusions of law, as necessary, and to render an initial decision on the merits with respect to Discount's most recent complaint, which was filed on December 29, 2000 (the "Second Complaint").

During the January 23 Agenda Conference, the Hearing Officer made a status report to the Directors. Following the Agenda Conference, the parties met with the Hearing Officer. During the discussion with the Hearing Officer, BellSouth voluntarily agreed not to terminate Discount's service until after BellSouth had filed its response to Discount's Motion and the Hearing Officer or Authority had been

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Authority that "Discount Communications has undergone a name change" to ATM/Discount Communications (*see* Exhibit 1). This name change was approved by the Authority on February 29, 2000. There is nothing in the Secretary of State's records to substantiate that either the alleged merger or name change actually took place. Indeed, those records demonstrate that Air Time Management, Inc. was dissolved effective 5/19/00 (*see* Exhibit 2). ATM Discount Communications, Inc., the entity which filed bankruptcy, was a separate corporation which was not issued a charter until April 10, 2000 (*see* Exhibit 3). ATM Discount Communications, Inc. has never sought certification as a reseller and is not a party to BellSouth's agreement with Discount Communications, a sole proprietorship.

provided the opportunity to review BellSouth's proposal with respect to the provision of service to Discount's customers by BellSouth at such time as BellSouth may terminate Discount's service.

The Bankruptcy Court entered its written order on January 22, 2001. The Order provides that: (1) effective ten days after entry of its Order, the automatic stay previously entered pursuant to 11 U.S.C. § 362 is completely lifted with respect to BellSouth, which restores BellSouth to all of its pre-petition rights; (2) BellSouth and the Debtor are free to exercise whatever rights they deem appropriate before the Authority; (3) the Debtor's (ATM Discount Communications, Inc.) motion to assume the executory (resale) contract between BellSouth and Discount is denied and that no executory contract exists between the Debtor and BellSouth; and (4) nothing in the order should be deemed to require BellSouth to accept future payments from the Debtor or shall be deemed a waiver of BellSouth's rights in the event such payments are accepted.<sup>2</sup>

In support of the Motion, counsel for Discount stated to the Authority on January 9 that ". . . the bankruptcy judge has now put it [the case] back in your lap." (Jan. 9 Tr., p. 37). Judge Brown's Order contains no such instructions. Indeed the Order clearly does not require the Authority to take any action whatsoever with respect to Discount. The Order merely states the obvious -- that

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<sup>2</sup> A copy of the January 22<sup>nd</sup> Order Denying Debtor's Motion to Assume or Reject Executory Contract and Granting Motion to Lift Automatic Stay, Case No. 00-33928-B is attached as Exhibit 4.

the parties are free to exercise whatever rights they deem appropriate before the Authority.

For the reasons set forth below, the Authority should decline Discount's request to enjoin BellSouth from terminating service. First, it is important to understand that undisputed sums remain owing by Discount to BellSouth. Indeed, Discount's counsel acknowledged as much when responding to questions posed by the Directors during the January 9 Agenda Conference (*see* Jan. 9 Tr., p. 49).

Second, the \$2,500 per day escrow payment and \$50,000 security deposit were ordered by the Court as adequate assurance of payment for post-petition services provided by BellSouth. *See* Paragraphs 1 and 2 of the Court's Order Granting Motion of BellSouth Telecommunications, Inc. for Adequate Protection and to Lift Automatic Stay entered December 4, 2000, a copy of which is attached as Exhibit 5. There is no dispute that substantial undisputed pre-petition amounts remain unpaid by Discount. Indeed, the undisputed amounts referenced in the parties' joint letter of November 2, 2000 remain unpaid to this date.<sup>3</sup> The \$2,500 per day escrow payments and \$50,000 deposit, therefore, provide no protection whatsoever to BellSouth with respect to past due amounts that were incurred prior to the filing of the bankruptcy petition on November 2, 2000. BellSouth agrees with Directors Malone and Greer that a sufficient amount of time has elapsed for Discount to pay undisputed amounts. (Jan. 9 Tr., p. 50).

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<sup>3</sup> The parties' joint letter of November 2, 2000, which was requested by the Authority, is attached as Exhibit 6.

Third, such escrow payments and security deposit are insufficient even to protect BellSouth even on a going-forward basis. The most current bill sent to Discount (January 4, 2001) shows a balance of \$88,494, exclusive of Directory Assistance charges. Obviously, this is substantially a greater amount than what is being paid into escrow each month by Discount. Discount is currently paying \$2,500 per business day into escrow, or approximately \$52,500 per month (\$2,500 x 21 business days).

Further, Discount's invitation to embroil the Staff and the Authority in a new round of billing claims should be declined. Discount's January 5 Motion requests that the Authority direct BellSouth to "take no action to terminate or impair service to Discount while the Staff is investigating Discount's complaint." Contrary to Discount's argument that the Authority has a duty to investigate every conceivable billing dispute, BellSouth submits that the Authority has already completed the work the parties asked it to do. The Authority convened a contested case, took testimony, reviewed briefs, deliberated, and made decisions on the issues the parties submitted in Docket No. 00-00230. Discount won one issue and lost the other. After losing that issue and acknowledging to the Authority that substantial amounts of undisputed funds were due and owing, Discount attempted to shield itself with bankruptcy by filing a bankruptcy petition under the name of ATM Discount Communications, Inc., a legal entity which, as the bankruptcy court found, is not even a party to the reseller agreement with BellSouth. Moreover, ATM Discount Communications, Inc. is not the entity which initiated the earlier

complaint against BellSouth and has never been certified by the Authority to be a reseller of telecommunications service. Finding that ATM Discount Communications, Inc. is not a party to any contract with BellSouth, the stay has been lifted completely.

The latest round of billing claims Discount offers simply do not address the undisputed amounts owed or present issues the Hearing Officer must decide. The Authority's Order of January 12, 2001 states that the Hearing Officer should "make findings of fact and conclusions of law as necessary" regarding the Second Complaint (emphasis added). The Order therefore allows the Hearing Officer to make a finding that material undisputed sums remain owing, the stay has been lifted, and BellSouth is free to take action to terminate service to Discount. BellSouth submits that neither the Hearing Officer nor the Authority has an obligation to run down every thread of every alleged billing dispute. Indeed, Discount's Second Complaint says as much: ("Since these billing disputes involve primarily questions of fact and do not appear to raise any novel legal or regulatory issues . . . ." (See p. 1 of Second Complaint)).

BellSouth has worked in good faith to resolve disputes with Discount and in many cases has given Discount the benefit of the doubt on claims in order to emphasize the critical point that even assuming for the sake of argument that Discount is correct on certain billing claims, a substantial and ever increasing undisputed amount remains owed. BellSouth requests that the Hearing Officer deny Discount's request to enjoin BellSouth from taking any action to impair

services "while the Staff is investigating Discount's complaint." Otherwise, Discount will simply file a new complaint at such time as the Staff finishes its investigation of the most recent complaint. This cycle simply should not be allowed to continue, particularly where it is undisputed that substantial amounts remain unpaid. Assuming BellSouth terminates Discount's services, BellSouth will voluntarily agree to accept Discount's customers based on the following:

BellSouth will assume responsibility for providing service to the existing customers of Discount on the date that BellSouth terminates service to Discount. Beginning on that date, BellSouth will begin changing the service records of Discount's customers to reflect BellSouth as the service provider. Although this process may require several weeks to complete, the change will be effective on the date that BellSouth terminates service to Discount, and BellSouth will not bill Discount for any services to these customers after this termination date. Service to Discount's customers will not be interrupted, and BellSouth will waive the \$20 reconnection charge that is normally applied in this situation. As customers are switched, BellSouth will send a letter to each customer explaining the change in their service provider and advising the customer that they are not obligated to keep their BellSouth service, but are free to choose any other service provider.

Once this conversion is completed, BellSouth will treat these customers in accordance with current tariffs. Any customers with an outstanding balance from a previous BellSouth account will be allowed up to one year to address this outstanding balance under the terms and conditions of BellSouth's Tariff A2.4.3.1. Other matters, including credit history information, deposit requirements (if any), and documentation to qualify for Lifeline service will be addressed under the terms and conditions of the applicable BellSouth tariffs and as required by federal and state law.

BellSouth's proposal is a good faith attempt to address the Directors' concerns with respect to the provision of service to Discount's customers at such time as BellSouth may terminate Discount's service. BellSouth's proposal will



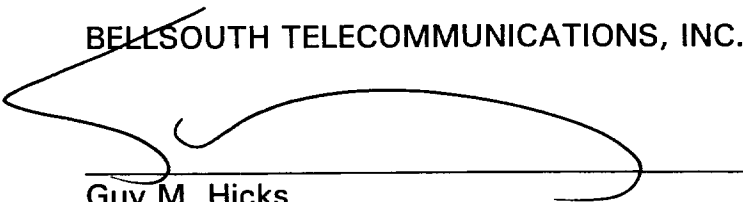
result in customers paying BellSouth's tariffed rates, which are lower than those charged by Discount. Of course, as stated above, Discount's customers are free to use a service provider other than BellSouth. In order to effectuate this customer transition, BellSouth requests that the Hearing Officer approve BellSouth's proposal for accepting Discount's customers. This flexibility is necessary because of the potential argument that BellSouth's acceptance of these customers without Authority or Hearing Officer approval would pose a technical violation to the Authority's slamming rules. Alternatively, BellSouth should be allowed to terminate service to Discount and Discount should notify its customers of alternative service providers. Under the latter alternative, BellSouth would assume no obligation to accept Discount customers under the terms proposed above.

#### **CONCLUSION**

The Authority should not order BellSouth to continue providing service if Discount is not paying its bills. BellSouth's voluntary, good faith proposal for accepting Discount's customers should be approved.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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Guy M. Hicks  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300  
(615) 214-6301

**CERTIFICATE OF SERVICE**

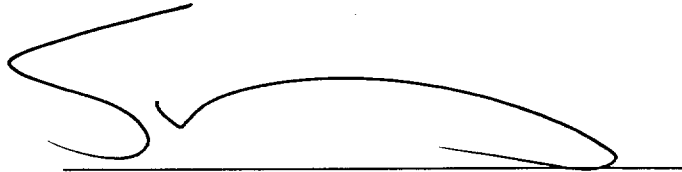
I hereby certify that on January 26, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, Conners & Berry  
414 Union Avenue, #1600  
Post Office Box 198062  
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

Vance Broemel, Esquire  
Consumer Advocate Division  
426 Fifth Avenue North  
Nashville, Tennessee 37243-0500



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## **EXHIBIT 1**

**Discount Communications**  
"Your Complete Telecommunications Provider"

3798 Park Ave  
Memphis, TN 38111-4684  
Phone... (901) 843-6070  
Toll Free 888 589-6505  
Fax... (901) 327-2809

REC'D TN  
REGULATORY AUTH.

'00 FEB 14 AM 11 14

EXECUTIVE SECRETARY

00-00110  
128102

To: Tennessee Regulatory Authority, Executive Secretary

Dear Mr. David Waddell,

This letter is to serve as notice that ~~Discount Communications~~ has undergone a name change. The new name for Discount Communications is ~~ATM/Discount Communications~~. The address for ATM/Discount Communications is 3798 Park Ave. Memphis, TN. 38111. Please allow all previous and future records reflect this change.

Thanking You in Advance,

  
Edward Hayes  
President

"Your Complete Telecommunications Provider"

POSTED  
2-14-00  
00-00110

PALD

## **EXHIBIT 2**

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
6th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

ISSUANCE DATE: 01/10/2001  
REQUEST NUMBER: 01010534

CHARTER/QUALIFICATION DATE: 08/25/1998  
STATUS: ADMIN DISSOLVED  
CORPORATE EXPIRATION DATE: PERPETUAL  
CONTROL NUMBER: 0356390  
JURISDICTION: TENNESSEE

TO:  
THE SEARCH IS ON  
PO BOX 330007

NASHVILLE, TN 37203

REQUESTED BY:  
THE SEARCH IS ON  
PO BOX 330007

NASHVILLE, TN 37203

I, RILEY C DARNELL, SECRETARY OF STATE OF THE STATE OF TENNESSEE DO HEREBY CERTIFY THAT  
"AIR TIME MANAGEMENT, INC."

WAS INCORPORATED OR QUALIFIED TO DO BUSINESS IN THE STATE OF TENNESSEE ON THE  
ABOVE DATE, AND THAT THE ATTACHED DOCUMENT(S) WAS/WERE FILED IN OFFICE ON THE  
DATE(S) AS BELOW INDICATED:

REFERENCE NUMBER	DATE FILED	FILING TYPE	FILING ACTION
3550-1547	08/25/1998	CHART-PROFIT	NAM DUR STK PRN OFC AGT INC MAL FYC
ROLL 3833	12/01/1999	AN RPT	
ROLL 3915	02/18/2000	DETERMINATION	
	05/19/2000	ADM/DISSOLUTION	

FOR: REQUEST FOR COPIES

ON DATE: 01/10/01

FROM:  
TSIO  
SUITE 400  
1900 CHURCH STREET  
NASHVILLE, TN 37203-0000

FEEES  
RECEIVED: \$100.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$100.00

RECEIPT NUMBER: 00002783511  
ACCOUNT NUMBER: 00333725



*Riley C Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

# CHARTER

OF

AIR TIME MANAGEMENT, INC.

The undersigned person(s) under the Tennessee Business Corporation Act adopt(s) the following charter for the above listed corporation:

1. The name of the corporation is AIR TIME MANAGEMENT, INC.

[NOTE: Pursuant to Tennessee Code Annotated Section 48-14-101(a)(1), each corporation name must contain the word "corporation", "incorporated" or "company" or the abbreviation "corp.", "inc." or "co.".]

2. The number of shares of stock the corporation is authorized to issue is 50,000

3. (a) The complete address of the corporation's initial registered office in Tennessee is

3340 POPLAR AVENUE SUITE 314 MEMPHIS, TENNESSEE 38111  
Street Address City State, Zip Code  
County of SHELBY

[NOTE: A street address, a zip code and the county are required by Tennessee Code Annotated Section 48-12-102(a)(3).]

(b) The name of the initial registered agent, to be located at the address listed in (a), is

MORRIS HARRIS, JR.

4. The name and complete address of each incorporator is:

NEAL LABOVITZ 1850 OAKRUN COVE GERMANTOWN, TN 38138  
Name Address Zip Code

Name Address Zip Code

Name Address Zip Code

[NOTE: An address and zip code are both required by Tennessee Code Annotated Section 48-12-102(a)(4).]

5. The complete address of the corporation's principal office is:

3340 POPLAR AVENUE SUITE 314 MEMPHIS, TENNESSEE (SHELBY) 38111  
Street Address City State/Country Zip Code

[NOTE: A street address and a zip code are both required by Tennessee Code Annotated Section 48-12-102(a)(5).]

6. The corporation is for profit.

7. Other provisions:

[NOTE: Insert here any provision(s) desired and permitted by law. Examples: names and addresses of persons serving as the initial board of directors, business purpose(s) of the corporation, management or regulation of affairs of the corporation, provision limiting the personal liability of directors for monetary damages for breach of fiduciary duty, etc. See Tennessee Code Annotated Section 48-12-102(b).]

8/24/98  
Signature Date

NEAL LABOVITZ  
Incorporator's Signature

NEAL LABOVITZ  
Incorporator's Name (typed or printed)

SECRETARY OF STATE  
CORPORATIONS SECTION  
JAMES K. POLK BUILDING, SUITE 1800  
NASHVILLE, TENNESSEE 37243-0306

ISSUANCE DATE: 02/18/00  
CONTROL NUMBER: 0356390

MORRIS HARRIS, JR.  
3340 POPLAR AVENUE  
SUITE 314  
MEMPHIS, TN 38111

RE: AIR TIME MANAGEMENT, INC.

NOTICE OF DETERMINATION

Pursuant to the provisions of Sections 48-24-201 or 48-25-301 of the Tennessee Business Corporation Act or Sections 48-64-201 or 48-65-301 of the Tennessee Nonprofit Corporation Act, it has been determined that the following ground(s) exist(s) for the administrative dissolution of the above corporation, if a Tennessee corporation, or the revocation of its certificate of authority, if a foreign corporation:

The Corporation Annual Report which was due on or before 12/01/99 has not been filed. To obtain an annual report form or for additional information, please call this office at (615) 741-2286.

If the corporation does not correct each ground for dissolution or revocation or provide evidence that each ground does not exist within two (2) months after issuance date of this notice, the corporation and any associated assumed name(s) shall be administratively dissolved or may have its certificate of authority revoked, as appropriate. For assistance in this regard, please contact this office at the appropriate telephone number listed above.



3 3 5 1 7 0 7

SECRETARY OF STATE  
CORPORATIONS SECTION  
JAMES K. POLK BUILDING, SUITE 1800  
NASHVILLE, TENNESSEE 37243-0306

EFFECTIVE DATE: 05/19/80  
TELEPHONE CONTACT: (615) 741-2286  
CONTROL NUMBER: 0356390

MORRIS HARRIS, JR.  
3340 POPLAR AVENUE  
SUITE 314  
MEMPHIS, TN 38111

RE: AIR TIME MANAGEMENT, INC.

#### CERTIFICATE OF ADMINISTRATIVE DISSOLUTION

Pursuant to the provisions of Sections 48-24-202 or 48-25-302 of the Tennessee Business Corporation Act or Sections 48-64-202 or 48-65-302 of the Tennessee Nonprofit Corporation Act, respectively, this constitutes notice that the above corporation, and any associated assumed name(s) is hereby administratively dissolved, if a Tennessee corporation, or that its certificate of authority is revoked, if a foreign corporation, for the following reason(s):

For failure to file the Corporation Annual Report, as required by Chapter 16 of the Tennessee Business Corporation Act or the Tennessee Nonprofit Corporation Act.

The corporation or its certificate of authority may be reinstated upon the elimination of the above indicated ground(s) and the filing of an application for reinstatement. The corporate name must be available and otherwise satisfy the requirements of Section 48-14-101 of the Tennessee Business Corporation Act or Section 48-54-101 of the Tennessee Nonprofit Corporation Act. The reinstatement application fee is Seventy Dollars (\$70.00).

**EXHIBIT 3**

**Secretary of State**  
**Division of Business Services**  
312 Eighth Avenue North  
4th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

ISSUANCE DATE: 01/10/2001  
REQUEST NUMBER: 01010534

CHARTER/QUALIFICATION DATE: 04/10/2000  
STATUS: ACTIVE  
CORPORATE EXPIRATION DATE: PERPETUAL  
CONTROL NUMBER: 0387702  
JURISDICTION: TENNESSEE

TO:  
THE SEARCH IS ON  
PO BOX 330007

REQUESTED BY:  
THE SEARCH IS ON  
PO BOX 330007

NASHVILLE, TN 37203

NASHVILLE, TN 37203

I, RILEY C DARNELL, SECRETARY OF STATE OF THE STATE OF TENNESSEE DO HEREBY CERTIFY THAT  
-----  
"ATM / DISCOUNT COMMUNICATIONS, INC."

-----  
WAS INCORPORATED OR QUALIFIED TO DO BUSINESS IN THE STATE OF TENNESSEE ON THE  
ABOVE DATE, AND THAT THE ATTACHED DOCUMENT(S) WAS/WERE FILED IN OFFICE ON THE  
DATE(S) AS BELOW INDICATED:

REFERENCE NUMBER	DATE FILED	FILING TYPE	FILING ACTION
3880-0198	04/10/2000	CHART-PROFIT	NAM CUR STK PRN OFC AGT INC MAL FYC

-----  
FOR: REQUEST FOR COPIES

ON DATE: 01/10/01

FEEES

FROM:  
TSIO  
SUITE 400  
1900 CHURCH STREET  
NASHVILLE, TN 37203-0000

RECEIVED: \$100.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$100.00

RECEIPT NUMBER: 00002783511  
ACCOUNT NUMBER: 00333725



*Riley C Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

State of Tennessee



Department of State  
Corporation Section  
18th Floor, James K. Polk Building  
Nashville, TN 37243-0306

RECEIVED 2-13-10 10:11:13  
STATE OF TENNESSEE  
CHARTER  
00 APR 10 04:09:05  
RILEY, DANIEL L.  
SECRETARY OF STATE

For Office Use Only  
RECEIVED  
STATE OF TENNESSEE  
2009 FEB 28 PM 1:50  
RILEY, DANIEL L.  
SECRETARY OF STATE

The undersigned acting as incorporator(s) of a for-profit corporation under the provisions of the Tennessee Business Corporation Act adopts the following Articles of Incorporation.

1. The name of the corporation is:  
ATM / Discount Communications, Inc.

[NOTE: Pursuant to Tennessee Code Annotated § 48-14-101(a)(1), each corporation name must contain the words corporation, incorporated, or company or the abbreviation corp., inc., or co.]

2. The number of shares of stock the corporation is authorized to issue is: 100,000

3. The name and complete address of the corporation's initial registered agent and office located in the State of Tennessee is:

Edward Maurice Hayes, 3798 Park Avenue Memphis, TN 38111

(Name)

(Street Address)  
Shelby

(City)

(State/Zip Code)

(County)

4. List the name and complete address of each incorporator:

Marcus D. Ward 3675 Woodglade Lane Memphis, TN 38116

(Name)

(Include: Street Address, City, State and Zip Code)

(Name)

(Street Address, City, State and Zip Code)

(Name)

(Street Address, City, State and Zip Code)

5. The complete address of the corporation's principal office is:

3798 Park Avenue Memphis TN 38111

(Street Address)

(City)

(State/Country/Zip Code)

6. The corporation is for profit.

7. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time are:

Date \_\_\_\_\_, Time \_\_\_\_\_ (Not to exceed 90 days.)

8. Other provisions:

None

2-25-00  
Signature Date

Marcus D. Ward  
Incorporator's Signature  
Marcus D. Ward, Esq.  
Incorporator's Name (Typed or Printed)

**EXHIBIT 4**

UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION  
**FILED**

JAN 22 2001

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

JUD G. WEINTRAUB  
CLERK OF COURT

In re:

ATM DISCOUNT COMMUNICATIONS, INC.

Case No. 00-33928-B

Debtor.

Chapter 11

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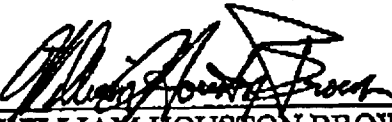
**ORDER DENYING DEBTOR'S MOTION TO  
ASSUME OR REJECT EXECUTORY CONTRACT AND  
GRANTING MOTION TO LIFT AUTOMATIC STAY**

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This matter came to be heard on January 4, 2001, upon the motion of the Debtor ATM Discount Communications, Inc. to assume an executory contract dated March 13, 1998, by and between Discount Communications and BellSouth Telecommunications, Inc. ("BellSouth"), and the objection of BellSouth thereto, and upon BellSouth's motion to lift automatic stay. Upon statement of counsel for the parties, and upon the entire record in this cause, the court made oral findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 which are incorporated herein by reference. Based on the record before the court, the court finds that the Debtor, ATM Discount Communications, Inc., is not a party to the contract between Discount Communications, a sole proprietorship owned by Ed Hayes, and BellSouth. Accordingly, the court finds that no executory contract exists between the Debtor and BellSouth and accordingly, the Debtor's motion to assume the executory contract should be and is hereby denied. In light of the court's finding, the court further finds that cause exists to completely lift the automatic stay pursuant to 11 U.S.C. § 362 with respect to BellSouth and to restore BellSouth to all of its pre-petition rights and the stay is hereby lifted. BellSouth and the Debtor are free to exercise whatever rights they deem appropriate before the Tennessee Regulatory Authority.

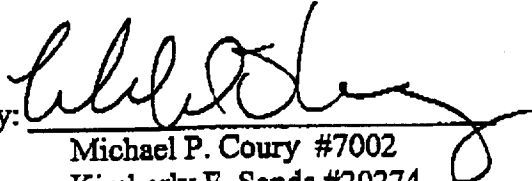
The court further finds that the lifting of the automatic stay pursuant to this order will not be effective until ten (10) days after entry of this order. Pending any appeal of this order, the Debtor may continue escrowing payments of \$2500 per day in accordance with this court's order of November 30, 2000 provided further that nothing in this order shall be deemed to require BellSouth to accept future payments from this Debtor or shall be deemed a waiver of BellSouth's rights in the event such payments are accepted. Pending further order of the court, the \$50,000 security deposit paid to BellSouth pursuant to this court's order of November 30, 2000 shall be retained by BellSouth.

IT IS SO ORDERED.

  
WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE  
DATED: JANUARY 22 2001

APPROVED:

WARING COX PLC

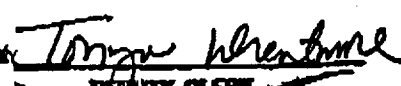
By:   
Michael P. Coury #7002  
Kimberly E. Sands #20274

50 N. Front Street, Suite 1300  
Memphis, Tennessee 38103  
901-543-8000  
Attorneys for BellSouth Telecommunications, Inc.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
A TRUE COPY ATTEST

JED G. WEINTRAUB  
CLERK OF COURT

JAN 22 2001

  
JED G. WEINTRAUB  
DEPUTY CLERK

ATM DISCOUNT COMMUNICATIONS INC.>Case No. 00-33928-B  
ORDER DENYING DEBTOR'S MOTION TO  
ASSUME OR REJECT EXECUTORY CONTRACT AND  
GRANTING MOTION TO LIFT AUTOMATIC STAY

**LAW OFFICE OF NEAL LABOVITZ**

By: \_\_\_\_\_  
Neal Labovitz  
916 Fern Cliff Cove, Suite 1B  
Southaven, MS 38671

**LAW OFFICE OF LARRY DIAMOND**

By: \_\_\_\_\_  
Larry Diamond  
236 Adams Ave.  
Memphis, TN 38103

cc: Sean Haynes



**EXHIBIT 5**

UNITED STATES BANKRUPTCY COURT  
WESTERN DIVISION  
**FILED**

**DEC 04 2000 M.H.**

**JED G. WEINTRAUB**  
CLERK OF COURT  
WESTERN DISTRICT OF TENN.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES BANKRUPTCY COURT  
**RECEIVED**  
NOV 30 2000 DP  
CLERK OF COURT  
WESTERN DISTRICT OF TENN.

**ATM DISCOUNT COMMUNICATIONS, INC.**

Case No. 00-33928-B

Chapter 11

Debtor.

**ORDER GRANTING MOTION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
FOR ADEQUATE PROTECTION AND TO LIFT AUTOMATIC STAY**

This matter came to be heard on November 21, 2000, upon the Motion of BellSouth Telecommunications, Inc. ("BellSouth") seeking Adequate Protection and, in the Alternative, to Lift Automatic Stay, and the Objection of the Debtor thereto. Upon statements of counsel for the Debtor and BellSouth, upon the pleadings filed in this cause, and upon the entire record in this matter, the Court finds that Debtor should be required to provide adequate assurance of payment of post-petition service to BellSouth pursuant 11 U.S.C. § 366 and that cause exists for modifying the automatic stay as set forth herein.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. Debtor shall pay the greater of the sum of \$50,000.00 or the amount held in escrow by Boulton, Cummings, Conner and Berry, P.C., to BellSouth as adequate assurance of payment of post-petition services provided by BellSouth by the close of business on November 27, 2000.

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In re: ATM Discount Communications, Inc.  
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TELECOMMUNICATIONS, INC. FOR ADEQUATE  
PROTECTION AND TO LIFT AUTOMATIC STAY

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2. As additional adequate assurance, the Debtor shall pay the sum of \$2,500.00 per day in good funds into an account as directed by BellSouth, which amounts shall be applied by BellSouth towards the post-petition obligations of the Debtor. Such payments shall commence on November 27, 2000 and shall continue pending further orders of the Court.

3. The Debtor shall file with the Court on or before December 1, 2000, a motion to assume or reject any executory contracts between the Debtor and the BellSouth.

4. The Automatic Stay is lifted pursuant to 11 U.S.C. § 362 to permit BellSouth, in its discretion, to file such pleadings as BellSouth may deem appropriate with the Tennessee Regulatory Authority (TRA) seeking authority from the TRA to provide immediate interim phone service to customers of the Debtor in the event the Debtor should voluntarily cease operations or in the event BellSouth should terminate service to the Debtor pursuant to further orders of this Court.

5. The Automatic Stay is lifted to permit both the Debtor and BellSouth to seek whatever relief either party deems appropriate from the TRA or any other regulatory authority which has jurisdiction over any disputes between the Debtor and BellSouth and to permit the parties to appeal any rulings under applicable law.

6. On or before December 31, 2000, the Debtor shall file a formal complaint with the TRA asserting any and all unresolved billing disputes asserted by the Debtor against BellSouth

In re: ATM Discount Communications, Inc.  
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which are subject to the jurisdiction of the TRA. Debtor shall use its best efforts to obtain an expedited resolution of any such complaint.

7. On or before December 1, 2000, the Debtor shall submit to counsel for BellSouth an itemization of all post-petition billing disputes asserted by the Debtor with respect to any bills submitted by BellSouth to the Debtor for post-petition service.

8. In the event the Debtor defaults in making any of the payments set forth in paragraph number 2 above to BellSouth, BellSouth shall file a written notice of default with this Court, with copies to be served upon counsel for the Debtor and the Debtor. If the Debtor fails to cure such default within 5 days from service, then the Automatic Stay shall be lifted pursuant to 11 U.S.C. § 362 without further orders or hearings before this Court, and BellSouth shall be authorized to terminate service to the Debtor.

9. In the event of a default which is not cured by the Debtor within 5 days, BellSouth shall be authorized to apply all or part of the security deposit described in paragraph 1 to any post-petition administrative claim which remains unpaid.

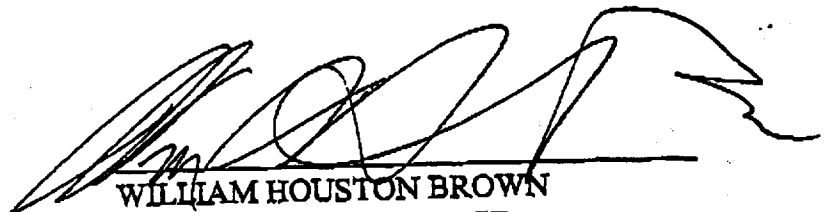
10. Parties are directed to use their best efforts to obtain expedited relief from the TRA with respect to matters within the TRA's jurisdiction. This Court shall hold a status conference on the December 11, 2000, at which time the parties are directed to advise the Court

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as to the status of any pending administrative proceedings and the post-petition status of the  
Debtor's account.

11. This Order is without prejudice of the parties to seek modification of this Order or  
further relief from this Court for good cause shown.

IT IS SO ORDERED.



WILLIAM HOUSTON BROWN  
U.S. BANKRUPTCY JUDGE

Dated: DEC 04 2000

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
A TRUE COPY ATTEST

JED G. WEINTRAUB  
CLERK OF COURT

APPROVED:

VAUGHAN & LABOVITZ

DEC 11 2000

By: Neal Labovitz  
Neal Labovitz  
Attorney for Debtor

By: Tanya Whentmore  
DEPUTY CLERK

WARING COX, PLC

By: Michael P. Coury  
Michael P. Coury #7002  
Kimberly E. Sands

☒ Motion ☒ Order ☐ Other  
☒ Entered on the Court docket on 12/14/00 and mailed to:  
☐ Debtor(s), Debtor(s) Attorney, Trustee  
☐ Servicing by Court  
☐ Certificate of Mailing to Matrix  
☒ For servicing by Movant  
By: Neal Labovitz  
By: M. Herrin, Deputy Clerk

In re: ATM Discount Communications, Inc.  
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TELECOMMUNICATIONS, INC. FOR ADEQUATE  
PROTECTION AND TO LIFT AUTOMATIC STAY

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50 N. Front St., Suite 1300  
Memphis, TN 38103  
(901) 543-8000  
Attorneys for BellSouth Telecommunications, Inc.

**EXHIBIT 6**



BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300  
guy.hicks@bellsouth.com

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REGULATORY AUTH.  
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OFFICE OF THE  
EXECUTIVE SECRETARY  
November 2, 2000

Guy M. Hicks  
General Counsel  
615 214-6301  
Fax 615 214-7406

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37245

Re: *Discount Communications, Inc.*  
Docket No. 00-00230

Dear Mr. Collier:

This is in response to the Authority's request that the parties file a joint stipulation on the undisputed and disputed amounts. In accordance with your request, this letter will follow the format used in Discount's letter to BellSouth dated October 27, 2000.

1. BellSouth has confirmed receipt of a check for \$12,000 from Discount's escrow account. Therefore, that amount will be credited against the amounts owed by Discount to BellSouth.

2. Lifeline credit -- \$65,201.50. This amount, which was the subject of the Authority's denial of Discount's Petition for Reconsideration, is undisputed. By not disputing this amount, Discount does not waive any appeal rights it has with respect to this issue.

3. FCC Link-Up dispute -- \$5,481.50. The parties agree that this amount remains disputed and represents part of the Link-Up dispute issue submitted to the FCC staff.

4. Link-Up credits -- \$18,675. While BellSouth acknowledges that Discount is entitled to some Link-Up credits that it has not yet received, BellSouth believes that the actual amount to which Discount is entitled is less than \$18,675. In a good-faith effort to resolve this issue, however, BellSouth has agreed to credit the entire amount of \$18,675 against the other amounts owed to BellSouth.



Richard Collier, Esquire  
November 2, 2000  
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EXECUTIVE SECRETARY

5. Multiple payments -- \$26,600. This amount remains disputed, and Union Planters Bank is presently researching the matter. Although it appears that both checks were cashed and that the money was deducted from Discount's bank account, none of the routing information on the copy of the canceled check that we have a copy of indicates that it was BellSouth that cashed the check or that the money was deposited into a BellSouth bank account.

6. LENS system -- \$19,985. While BellSouth acknowledges that Discount is entitled to some credits to its bill with regard to this dispute, BellSouth believes the actual amount to which Discount is entitled is less than \$19,985. This amount, therefore, remains in dispute, but BellSouth is continuing to investigate the allegations set forth in Discount's letter.

7. 911 dispute -- \$1,900. This amount remains in dispute.

8. Promotional charges -- \$4,100. While BellSouth acknowledges that Discount may be entitled to some credits to its bill with regard to this dispute, BellSouth believes the actual amount to which Discount is entitled is less than \$4,100. This amount, therefore, remains in dispute, but BellSouth is continuing to investigate the allegations set forth in Discount's letter.

9. Charges for third party calls -- \$1,831.35. This amount remains in dispute.

10. Charges for services that allegedly should have been disconnected -- \$10,000. This amount remains in dispute.

11. Other billing disputes, new issues (no estimate yet available). This amount remains in dispute.

12. The \$57,518.74 amount referenced in Discount's October 27 letter. During yesterday's meeting, Discount stated that it has offered to pay this amount to BellSouth as part of a settlement pending further investigation of the issues described above. BellSouth does not agree to this characterization and will let the letter, as well as Discount's comments during the October 31, 2000 hearing in this

Richard Collier, Esquire  
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docket, speak for themselves. BellSouth believes a substantially higher sum is due and owing as of November 3, 2000.

We look forward to meeting with you tomorrow. Thank you again for meeting with us during yesterday and today's meetings, which we believe were conducted in good faith by the parties.

Very truly yours,

Henry Walker  
Henry Walker by *Jem*  
w/ permission

GMH/jem

Guy Hicks  
Guy M. Hicks by *Jem*  
w/ permission

cc: Henry Walker, Esquire